

## **Board of Land and Natural Resources Meeting**

**Friday, August 27, 2021**

### **Agenda Issue**

#### **M-4**

Issuance of Revocable Permits for Aircraft Parking to K & S Helicopters Inc.,  
Situated at Kahului Airport (OGG)

#### **Recommendations of Urgency**

Testimony Provided by Michelle S. Matson  
O'ahu Tour Helicopter Safety and Noise Inter-Action Group

Aloha Chairperson Case and Board Members:

K & S Helicopters have been and continue to be egregious low-flying tour choppers over O'ahu's communities. Given this bad history, now comes the State Department of Transportation with a highly questionable submittal on behalf of this operator for use of a two parking spaces at OGG for their unfettered tour helicopter activity.

Hawai'i's private tour helicopter industry has a proven checkered past relating to protection of the public on the ground and the State's Natural Resources:

The following commercial helicopter crashes and emergencies have occurred in Hawai'i since September 2018:

- September 18, 2018 - Novictor Robinson-44 crash in Wahiawa, O'ahu;
- October 22, 2018 - Novictor Robinson-44 crash at Kaneohe Bay recreational sand bar;
- February 21, 2019 - K&S "Paradise" Hughes-369E crash in Waipio Valley, Hawai'i Island;
- April 16, 2019 - K&S "Paradise" Hughes-369E crash in Sacred Falls State Park, O'ahu;
- April 29, 2019 - Novictor Robinson-44 crash on a Kailua town street with 3 fatalities;
- May 21, 2019 - Schuman "Magnum" Hughes-369D emergency landing in Diamond Head State Monument crater park with 3,300 daily visitors;
- December 26, 2019 - Safari Eurocopter-AS350 crash on a Kauai cliff face near the Na Pali Coast with 7 fatalities;
- March 5, 2020 – Blue Hawaiian Eurocopter 130 hard landing in Puna, Hawai'i Island. (Emphasis added.)

In 2016 a fatal tour helicopter crash occurred in Pearl Harbor near the USS Arizona memorial and the Pearl Harbor nuclear submarine base.

*Conclusion: Hawai'i can no longer risk tour helicopters crashing and burning within Hawai'i's protected Natural Resources, established communities, and coastal nuclear defense areas.*

Because of the intense significant adverse impacts to Hawai'i's protected natural resources, the revocable permits for tour helicopter ground facilities should clearly include a stringent condition that K & S Helicopters must comply with flying one (1) mile offshore of any State Monument, State Park, Natural Habitat or Reserve.

Hawaii Revised Statutes §171-55:

Notwithstanding any other law to the contrary, the board of land and natural resources may issue permits for the temporary occupancy of state lands or an interest therein on a month-to-month basis by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State, subject, however, to those restrictions as may from time to time be expressly imposed by the board. A permit on a month-to-month basis may continue for a period not to exceed one year from the date of its issuance; provided that the board may allow the permit to continue on a month-to-month basis for additional one year periods.  
(Emphasis added.)

Hawaii Administrative Rules §11-200.1-10:

Multiple or phased actions. A group of actions shall be treated as a single action when:

- (1) The component actions are phases or increments of a larger total program;
- (2) An individual action is a necessary precedent to a larger action;
- (3) An individual action represents a commitment to a larger action...

The K & S tour helicopter operator continuously ignores and violates<sup>1</sup> the following FAA CFR 14 Part 136 Appendix A regulations specific to Hawaii<sup>2</sup> relating to minimum flight altitude and distance:

***Section 6. Minimum flight altitudes*** . Except when necessary for takeoff and landing, or operating in compliance with an air traffic control clearance, or as otherwise authorized by the Administrator, no person may conduct an air tour in Hawaii:

- (a) Below an altitude of 1,500 feet above the surface over all areas of the State of Hawaii, and,
  - (b) Closer than 1,500 feet to any person or property; or,
  - (c) Below any altitude prescribed by federal statute or regulation.
- (Emphasis added.)

In addition, an Environmental Impact Statement should be necessarily required with each tour aircraft ground use permit application. The present permit application remains insufficient and open-ended by simply stating the following:

The State of Hawai'i, Department of Transportation, Airports Division, has determined that the environmental impacts for the subject land use is covered by the Kahului Airport Improvements Final Environmental Impact Statement (EIS), published by the Office of Environmental Quality Control (OEQC) in the October 23, 1997, issue of The Environmental Notice. The EIS was accepted by the Governor on February 18, 1998. Accordingly, all relevant mitigation from the EIS and best management practices will be implemented to address the minimum impacts of this action.

---

<sup>1</sup> See: Screenshot Attachments

<sup>2</sup> See: [https://www.law.cornell.edu/cfr/text/14/appendix-A to part 136](https://www.law.cornell.edu/cfr/text/14/appendix-A%20to%20part%20136)

“Special Operating Rules for Air Tour Operators in the State of Hawaii”

The referenced Environmental Impact Statement is 24 years old. Today, the significant adverse environmental impacts of tour helicopters are clearly beyond the airports where they are docked and doing business,<sup>3</sup> and the clear environmental impacts of these tour helicopters must be immediately addressed within the ground permits, which presently enable their publicly detrimental activities.<sup>4</sup> Therefore prior to applying for any ground use permit for tour aircraft use within State property, a full Environmental Impact Statement must be required to address noise and safety protections in the greater public interest by maintaining offshore distance<sup>5</sup> from any State Monument, State Park, Natural Habitat or Reserve.

HRS §343-5 applicability and requirements for environmental review relating to proposed construction of new or the expansion or modification of existing helicopter facilities within the State “that by way of their activities, may affect:

- (A) Any land classified as a conservation district by the state land use commission under chapter 205;
- (B) A shoreline area as defined in section 205A-41; or
- (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places;”

(Emphasis added.)

Hawaii Administrative Rules §11-200.1-11(d):

Agencies shall not, without careful examination and comparison, use past determinations and previous EISs to apply to the action at hand. The action for which a determination is sought shall be thoroughly reviewed prior to the use of previous determinations and previously accepted EISs. Further, when previous determinations and previous EISs are considered or incorporated by reference, they shall be substantially relevant to the action being considered.

Incorporating essential and long-overdue conditions for any approval of HNL and OGG State land revocable ground use permits will serve as a precedent for protecting the State's Natural and Recreational Resources that the DOT Airports Division should equally follow for their State Airports ground use permits.

---

<sup>3</sup> See: Screenshot Attachments

<sup>4</sup> See: Resolution 21-188 <https://hnlidoc.ehawaii.gov/hnlidoc/document-download?id=11702>

<sup>5</sup> See: [https://www.law.cornell.edu/cfr/text/14/appendix-A\\_to\\_part\\_136](https://www.law.cornell.edu/cfr/text/14/appendix-A_to_part_136)

“Special Operating Rules for Air Tour Operators in the State of Hawaii”

**Section 3. Helicopter flotation equipment** . No person may conduct an air tour in Hawaii in a single-engine helicopter beyond the shore of any island, regardless of whether the helicopter is within gliding distance of the shore, unless:

- (a) The helicopter is amphibious or is equipped with floats adequate to accomplish a safe emergency ditching and approved flotation gear is easily accessible for each occupant; or
- (b) Each person on board the helicopter is wearing approved flotation gear.

Otherwise, those who remain blind to the continuing significant noise impacts and public safety hazards of tour helicopters will continue to be responsible for further compromising the integrity and quality of Hawaii's natural resources in favor of tour chopper operators "who fly wherever, whenever and however they choose,"<sup>6</sup> disturbing and desecrating the larger public's rightful peace and quality of life within and around Hawai'i's Natural Resources, parks and beaches, and established communities.

*To further emphasize the above, we would like to express our emphatic appreciation for BLNR's letter to the Federal Aviation Administration dated May 28, 2021.*

---

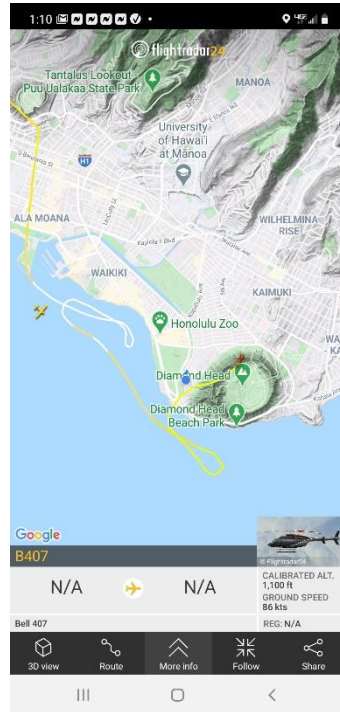
<sup>6</sup> Congressman Ed Case

## K & S “Paradise” Tour Helicopters

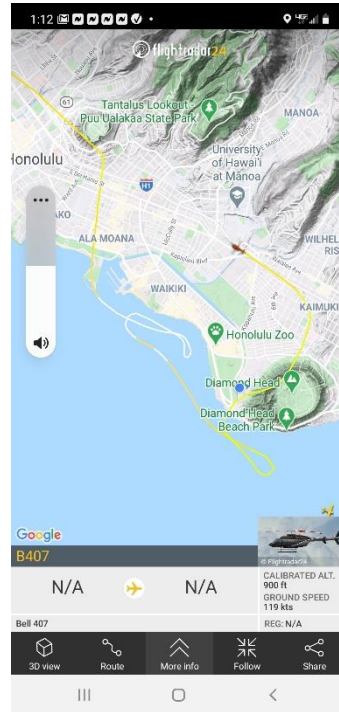
<https://registry.faa.gov/aircraftinquiry/Search/MMSResult?State.txt=HI&Mmstxt=4470706&Country.txt=US>

<https://registry.faa.gov/aircraftinquiry/Search/MMSResult?State.txt=HI&Mmstxt=1182154&Country.txt=US>

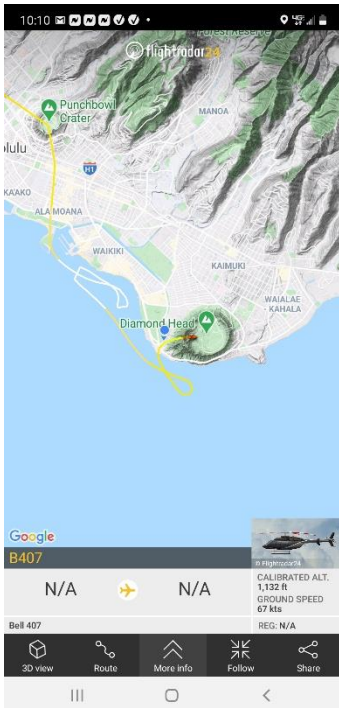
<https://registry.faa.gov/aircraftinquiry/Search/MMSResult?State.txt=HI&Mmstxt=4470706&Country.txt=US>



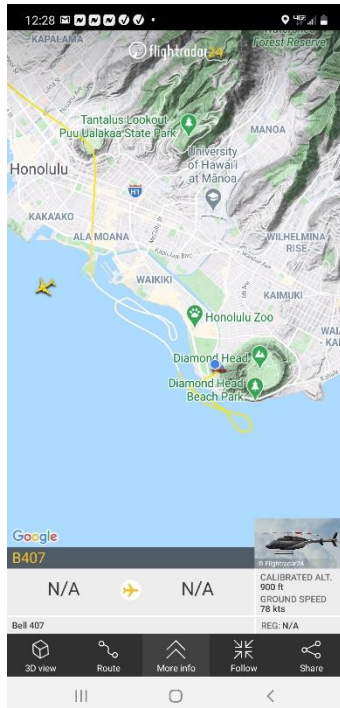
Mar 30, 2021, 1:11 PM



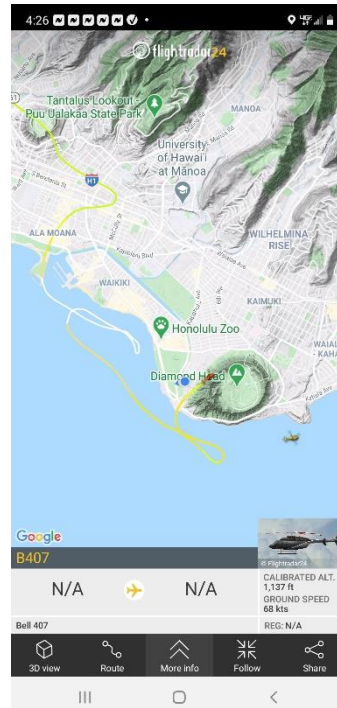
Tue, Mar 30, 1:12 PM



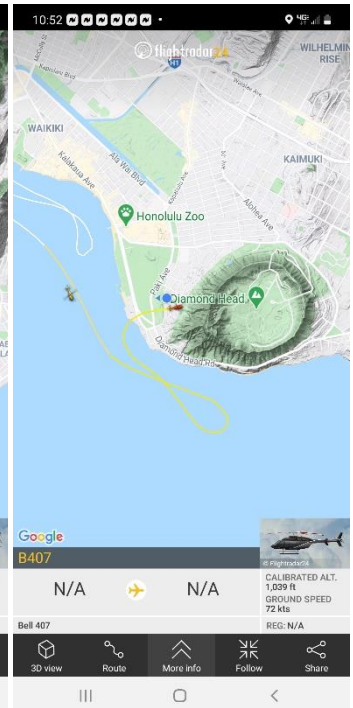
Apr 2, 2021, 10:10 AM



Apr 2, 2021, 12:28 PM

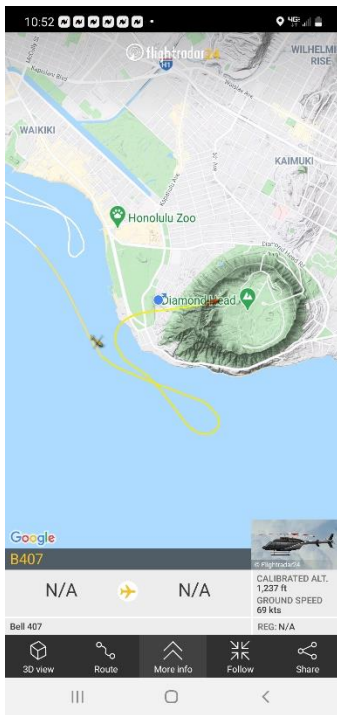


Apr 15, 2021, 4:27 PM

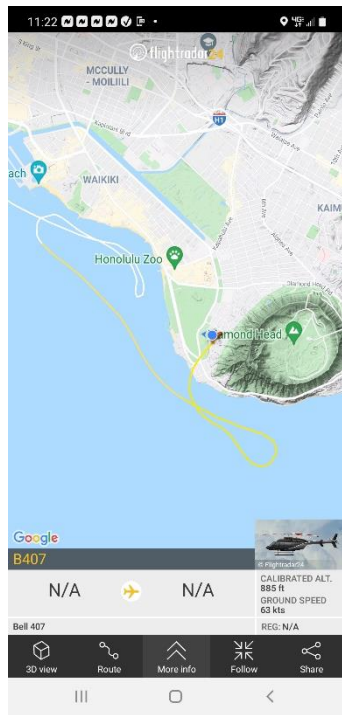


Apr 16, 2021, 10:52 AM

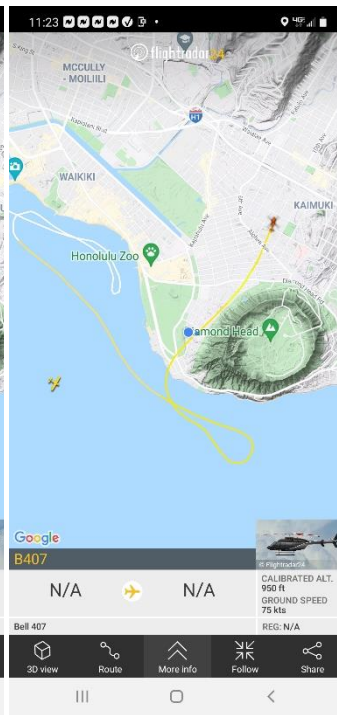




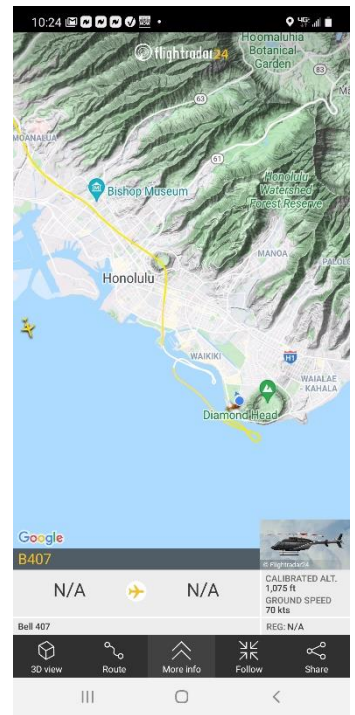
Apr 16, 2021, 10:52 AM



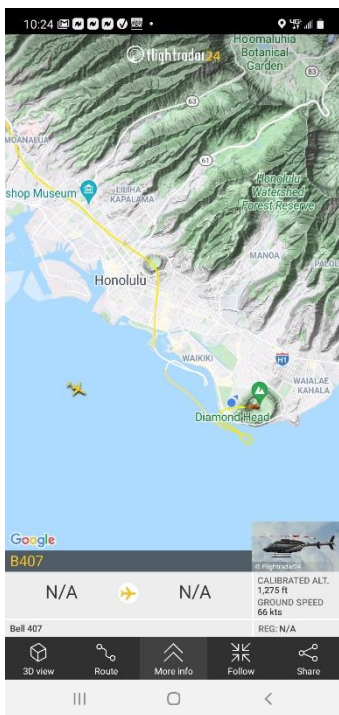
Sat, Jul 3, 2021 11:23 AM



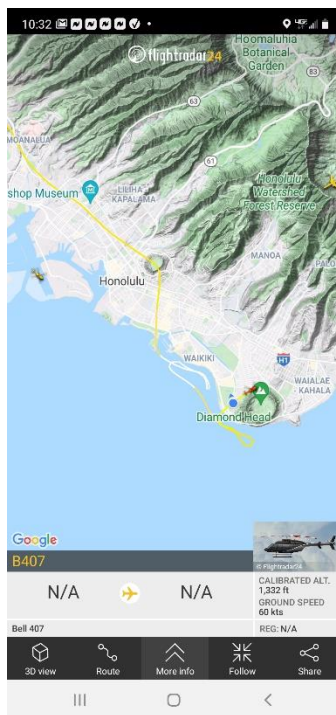
Sat, Jul 3, 2021 11:23 AM



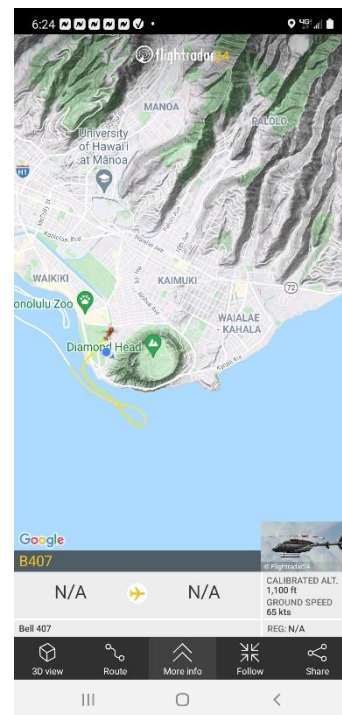
Thu, Jul 15, 2021 10:24 AM



Thu, Jul 15, 2021 10:25 AM



Fri, Jul 16, 2021 10:32 AM



Sat, Aug 14, 2021 6:24 PM